

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BRAD D. BRIAN (CA Bar No. 079001, *pro hac vice*)  
Brad.Brian@mto.com  
LUIS LI (CA Bar No. 156081, *pro hac vice*)  
Luis.Li@mto.com  
TRUC T. DO (CA Bar No. 191845, *pro hac vice*)  
Truc.Do@mto.com  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue, Thirty-Fifth Floor  
Los Angeles, CA 90071-1560  
Telephone: (213) 683-9100

THOMAS K. KELLY (AZ Bar No. 012025)  
tskelly@kellydefense.com  
425 E. Gurley  
Prescott, Arizona 86301  
Telephone: (928) 445-5484

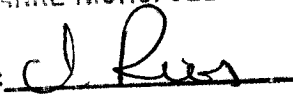
Attorneys for Defendant JAMES ARTHUR RAY

SUPERIOR COURT OF STATE OF ARIZONA  
COUNTY OF YAVAPAI

STATE OF ARIZONA,  
  
Plaintiff,  
  
vs.  
  
JAMES ARTHUR RAY,  
  
Defendant.

CASE NO. V1300CR201080049

**DEFENDANT JAMES ARTHUR RAY'S  
REPLY IN SUPPORT OF MOTION TO  
CHANGE PLACE OF TRIAL  
PURSUANT TO ARIZ. R. CRIM. P. 10.3**

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2010 JUL 28 PM 4:45  
JEANNE HICKS, CLERK  
BY: 

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

## I. BACKGROUND AND ARGUMENT

As this Court has recognized, the pretrial media coverage of this case has been extensive. *See* Hon. Warren R. Darrow, *Under Advisement Ruling on State’s Request for Order Directing All Parties to Refrain From Extrajudicial Comments “Gag Order” and Order Limiting Extrajudicial Statements*, March 31, 2010, *State v. James Arthur Ray*, V1300CR201080049. The coverage has also been inflammatory and prejudicial, bombarding the public with a flood of sensational accusations instead of factual accounts. *See* Motion to Change Place of Trial at 3–8. Fueled by the improper public commentary of law enforcement, the press has vilified Mr. Ray—distorting the facts of the accident, inveighing against his character, and grossly misrepresenting events at prior sweat lodge retreats. *See id.*

In the wake of this media frenzy, Mr. Ray cannot receive “a fair trial by a panel of impartial and indifferent jurors” in Yavapai County, as the federal Due Process Clause and the Arizona Constitution require. *See State v. Atwood*, 171 Ariz. 576, 647 (1992) (citing *Irvin v. Dowd*, 366 U.S. 717, 722 (1961)). Prejudice is presumed, and a defendant constitutionally entitled to a change of venue, if “the publicity is ‘outrageous,’ or where it pervades the court proceedings to the extent they take on a ‘carnival atmosphere.’” *State v. Befford*, 157 Ariz. 37, 39 (1988) (internal citations omitted). The relentless vitriol against Mr. Ray in the press meets both of these standards.

Mr. Ray respectfully submits that the record before the Court supports granting his motion. The pervasive prejudice caused by the media circus cannot be undone, and “in cases in which public emotion runs high or pretrial publicity threatens a fair trial, judges possess broad power to grant changes of venue.” *Johnson v. Louisiana* (1972) 406 U.S. 366, 380. If however, the Court declines to grant the motion, Mr. Ray requests that it be without prejudice to renew the motion closer to trial, based on media coverage that ensues before the now-continued trial date, taking into account that media coverage occurring close in time to trial weighs in favor of a presumption of prejudice. *See, e.g., State v. Nordstrom*, 200 Ariz. 229, 239 (2001).

1    **II.    CONCLUSION**

2            For the foregoing reasons, Mr. Ray requests the Court grant his motion. To the extent the  
3    Court declines to do so, Mr. Ray requests the Court to rule without prejudice.

4  
5  
6    DATED: July 28, 2010

MUNGER, TOLLES & OLSON LLP  
BRAD D. BRIAN  
LUIS LI  
TRUC T. DO

THOMAS K. KELLY

7  
8  
9  
10    By: 

Attorneys for Defendant James Arthur Ray

11  
12    Copy of the forgoing mailed/faxed/  
13    delivered this 28 day of July, 2010, to:

14    Sheila Polk  
15    Yavapai County Attorney  
16    255 E. Gurley  
17    Prescott, Arizona 86301

18    By: 